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Item 3 of the provisional agenda*
Consideration of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions received from Governments

Addendum

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* A/AC.254/29.

II. Proposals and contributions received from Governments

Cameroon*

[Original: French]

Article 17: Entry into force

Insert the word "twentieth" in the square brackets, thereby bringing the draft Protocol into line with the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, which contains the same provision.

China**

[Original: English]

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 6

1. Paragraph 6 should read as follows:

"6. States Parties shall ensure international cooperation to assist women and children [persons], especially from developing countries, in their repatriation and reintegration, in particular by providing financial aid."

New article 10 bis

2. After article 10, add a new article to read as follows:

"*Article 10 bis*
"*Measures to eliminate trafficking in women and children [persons]*

"1. States Parties shall, through bilateral and multilateral cooperation, take such measures as they deem effective to eliminate the consumer market that nurtures transnational trafficking in women and children [persons, especially women and children].

"2. States Parties shall ensure the strengthening of international cooperation to eliminate the root causes of the vulnerability of women and children [persons, especially women and children,] to such trafficking, such as poverty and underdevelopment."

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* Amendment previously issued in document A/AC.254/5/Add.19.

** Amendments previously issued in document A/AC.254/5/Add.19.

Colombia*

[Original: Spanish]

Article 5: Status of the victim in the receiving State

Paragraph 2

1. The following wording is suggested for paragraph 2:

> "2. Each State Party shall give appropriate consideration to humanitarian and support factors in determining the status of migrant of such a victim in its territory when it is the receiving State."

2. In the above text, the word "compassionate" has been replaced with the word "support", since the latter term would be more appropriate bearing in mind that the notion of support would be consistent with the victim assistance and protection measures adopted under the Protocol, such as those in articles 4 and 7. Also, the proposed text stipulates that the status of the victim is that of migrant and not any other status, thus preventing the victim from being liable to any form of punishment by reason of international trafficking.

Article 5 bis: Seizure and confiscation of gains

3. The following wording is suggested:

> "States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of property, instrumentalities and profits derived from the offences described in this Protocol, in conformity with individual guarantees enshrined in their domestic legislation. The proceeds from confiscation shall be used to defray the costs of providing due assistance to the victim."

4. In the suggested wording, the phrase "where deemed appropriate by States Parties and as agreed by them" has been deleted. This is because agreements between States Parties would relate only to cooperation measures for the detection of offences or the confiscation of property, which would not follow from the proposed text.

5. It is felt that the article should refer expressly to confiscation of property and instrumentalities that is achieved through cooperation between States and to the possibility of sharing such proceeds.

Holy See**

[Original: English]

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 5

1. Replace paragraph 5 with the following:

> "5. Each State shall endeavour to provide for the physical safety of victims and witnesses of crimes covered by this Protocol while they are within its territory,

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* Amendments previously issued in document A/AC.254/5/Add.19.

** Amendments previously issued in document A/AC.254/5/Add.19.

as well as for the protection of their family members by fostering cooperation with the countries where the family members reside."

Paragraph 6

2. Add an additional subparagraph to read:

"(...) Conversion of counterfeited proceeds and instruments of trafficking into educational and social programmes in favour of victims."

3. Add the following additional paragraphs after paragraph 6:

"(...) Each State shall ensure the benefits provided for by the Convention to victims of crime, independently of their ability to furnish relevant elements to the judicial inquiry;

"(...) Each State Party shall consider implementing measures, in cooperation with non-governmental organizations and local communities, to provide for the physical, psychological and social recovery and, when requested, spiritual assistance of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, as well as their education and employment opportunities, in a manner appropriate to their age, gender and special needs;

"(...) Each State Party shall endeavour to provide assistance to children removed from forced labour and to reintegrate them into social life, by ensuring to them free primary education and informal education and by supporting their families;

"(...) Each State Party shall endeavour to develop, in cooperation with countries of origin or habitual residence of victims, programmes for the social reinsertion of victims in order to prepare them for return or to assist them once they have returned to their country of origin;

"(...) Each State Party shall consider promoting training programmes for public and voluntary agents working for the rehabilitation of victims of trafficking."

Article 5: Status of the victim in the receiving State

Paragraph 1

4. Add the words "and to have access to education and employment" after the words "to remain in their territories".

Article 6: Repatriation of victims of trafficking in persons

Paragraph 4

5. Add the words "after the end of judicial procedures against traffickers, unless the return would involve danger to the life of the victim," after the words "without proper documentation".

Italy*

[Original: English]

1. Italy would like to strengthen the provisions concerning social assistance to and protection of victims. It is therefore proposed to devote an article to "Protection of human rights and social assistance" and a separate article to "Fair treatment and protection of trafficked persons". A more detailed version of article 5, related to residence status, is also proposed. The Italian proposals incorporate language from the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997).

2. Articles 3 *bis*, 4 and 5 should read:

"Article 3 bis

"Protection of human rights and social assistance

"1. States Parties shall protect the human rights of trafficked persons, as defined in the Universal Declaration of Human Rights[1] and the International Covenant on Civil and Political Rights,[2] and ensure that they may be exercised without discrimination on any ground such as race, colour, sex, language, religion, (disability, age, sexual orientation),[3] political or other opinion, national or social origin, property, birth or other status.[4]

"2. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider providing, in cooperation with non-governmental organizations, as appropriate:

"(a) Safe housing;

"(b) Counselling and information, in the mother language of the trafficked persons or in another language they can speak and understand, in particular as regards their legal rights;

"(c) Material, psychological and economic assistance;

"(d) Work, education and training opportunities.

"Article 4

"Fair treatment and protection of trafficked persons

"1. [*Identical to article 4, paragraph 1*].

"2. Each State Party shall endeavour to provide, as appropriate, before, during and after all criminal, civil or other legal proceedings:

"(a) [*Identical to article 4, paragraph 2 (a)*];

"(b) [*Identical to article 4, paragraph 2 (b)*];

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* Amendments previously issued in document A/AC.254/5/Add.19.

[1] General Assembly resolution 217 A (III).

[2] See General Assembly resolution 2200 A (XXI), annex.

[3] Language from article 13 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts.

[4] Including their status as victims of trafficking, as illegal migrants or prostitutes.

"(c) Appropriate measures to protect trafficked persons who act as a witness and, where necessary, their families living on its territory;

"(d) A change of identity, where necessary, if the threat is extremely serious.

"3. States Parties are encouraged to develop bilateral and multilateral agreements aimed at protecting trafficked persons and their families in countries of origin, transit and destination.

"4. In addition to measures provided pursuant to article 8 of this Protocol, States Parties shall to the extent possible under their domestic law:

"(a) Provide for the notification of victims, upon their request, of any form of release from custody or detention of persons arrested for or convicted of trafficking;

"(b) Develop methods of investigation, detection and gathering of evidence that minimize intrusion into the private life of the trafficked person and are free from gender bias;

"(c) Establish, whenever possible, specialized police and prosecutorial units trained to deal with gender issues and sensitivities of the victim of trafficking, especially children.

"Article 5
"Residence status of trafficked persons

"1. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider enacting immigration laws or other measures that will grant the trafficked person, in appropriate cases, temporary or permanent residence status, including the possibility of gainful employment.

"2. [*Identical to article 5, paragraph 2*].

"3. A trafficked person shall be given the opportunity to produce evidence in support of a claim that repatriation could seriously endanger his or her life."

Libyan Arab Jamahiriya*

[Original: Arabic]

Article 2 bis
Definitions

For the purposes of this Protocol, the following definitions shall apply:

(a) 'Child' shall mean any person under eighteen years of age;

(b) 'Trafficking in persons' shall mean any act carried out or initiated by a criminal organization, jointly or through any of its members, for an illicit purpose or goal, that involves:

(i) Promoting, facilitating or coordinating the holding, transferring or hiding of a child or a woman, with or without his or her consent, repeatedly or on one occasion, whether on behalf of another party or otherwise, for profit or otherwise, in order to

* Amendment previously issued in document A/AC.254/5/Add.19.

force the person to perform, not to perform or to tolerate an act or to subject him or her unlawfully to the power of another person;

(ii) Maintenance of a man, woman or child under the threat of some penalty in order to demand the performance of forced or compulsory labour to which the person has not voluntarily consented or in order to force the person, in accordance with custom or agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

(iii) The prostitution or other form of sexual exploitation of a woman or a child, even with the consent of that person;

(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

(vi) Acts aimed at rendering uncertain, changing or annulling the marital status of a woman, whether for payment or not or for the promise thereof, whether in accordance with a traditional or customary practice or not and with or without the use of threats or abuse of authority;

(vii) Extraction of body organs or organic tissue; [and]

(viii) Reduction to slavery, servitude or other similar condition.

Mexico*

[Original: Spanish]

Article 3: Obligation to criminalize

1. The following new wording is proposed:

"1. States Parties that have not done so shall adopt such legislation and other measures as are necessary to establish as criminal offences the conduct referred to in article [...] of this Protocol and to impose penalties that take into account the grave nature of such conduct.

"2. To the extent permitted by domestic law, intentional participation in any of the unlawful acts referred to in article [...] of this Protocol shall also be punishable."[1]

Article 4: Assistance for and protection of victims of trafficking in persons

Title

2. It is proposed that the title of article 4 be replaced with the following: "Compensation and restitution to victims".

3. The following new wording is proposed:

* Amendments previously issued in document A/AC.254/5/Add.19.

[1] The wording of this paragraph is based on that of article 4 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV), annex).

"1. In appropriate cases and to the extent permitted by domestic law, each State Party:

"(a) Shall prevent any form of punishment from being imposed on persons, in particular women and children, who are victims of international trafficking;

"(b) Shall ensure that victims of trafficking in persons, especially women and children, receive adequate protection;

"(c) Shall inform victims of crimes covered by this Protocol about the relevant court and administrative proceedings;

"(d) Shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons;

"(e) Shall assist victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

"(f) Shall provide appropriate housing, economic assistance and psychological, medical and legal support for victims of crimes covered by this Protocol;

"(g) Shall provide appropriate housing, education and care for children in governmental custody;

"(h) Shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

"2. In addition to the measures provided for in article 7 of this Protocol, each State Party that has not already done so shall enact immigration laws and/or adopt legislative or administrative measures that will enable identified victims of trafficking within its territory, after due consideration is given to humanitarian factors, to remain in its territory temporarily or, where appropriate, permanently."[2]

Article 5: Status of the victim in the receiving State

4. It is proposed that the text of article 5 be merged with that of article 4 as indicated above. Article 5 would thus be deleted.

Article 5 bis: Seizure and confiscation of gains

5. It is proposed that article 5 *bis* be deleted.

Article 6: Repatriation of victims of trafficking in persons

6. It is proposed that article 6 be replaced by the following:

[2] Text based on the proposal of France and the United Kingdom of Great Britain and Northern Ireland, amended by Mexico and Morocco.

"Article 6
"Repatriation of victims of trafficking in persons

"1. Each State Party agrees to facilitate and accept the return of a victim of trafficking in persons who is a national of that State Party or who has the right of abode in the receiving State.

"2. Each State Party shall agree to facilitate the repatriation of victims of such trafficking who desire to be repatriated or who may be claimed by persons exercising authority over them or whose repatriation is ordered in conformity with the domestic law of each State.[3]

"3. Repatriation shall take place only after agreement is reached with the State of destination as to the identity and nationality of the persons concerned, as well as to the place and date of arrival at frontiers. Each Party to this Protocol shall facilitate the passage of such persons through its territory.[3]

"4. [*Identical to article 6, paragraph 2*].

"5. In order to facilitate the return of victims of such trafficking who are without proper documentation, each State Party shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable such a victim who is a national of that State Party or who has the right of abode in the receiving State to re-enter its territory."

Article 7: Law enforcement measures

7. It is proposed that the title and text of article 7 be replaced with the following:

"Article 7
"Cooperation

"1. Within the scope of their respective areas of jurisdiction and within the framework of their domestic law, States Parties shall cooperate with one another in preventing and combating international trafficking in persons.

"2. For the purposes of paragraph 1 of this article, States Parties shall exchange information and establish systems of judicial cooperation that will contribute to improving the prevention and combating of unlawful conduct relating to international trafficking in persons. Moreover, they shall cooperate closely with a view to providing adequate protection and assistance for victims of such trafficking."

Article 8: Border measures

8. It is proposed that the title and text of article 8 be replaced with the following:

"Article 8
"Training

"All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in

[3] The wording of this paragraph is based on that of article 19, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area."

Morocco*

[Original: French]

Article 5: Status of the victim in the receiving State

Paragraph 1

It is proposed that paragraph 1 of article 5 be replaced by the following:

"1. In addition to measures provided for pursuant to article 7 of this Protocol, each State Party that has not done so shall enact immigration laws and/or adopt legislative and administrative measures that permit identified victims of trafficking in persons, after due consideration is given to humanitarian and compassionate factors, to remain in its territory temporarily or, in appropriate cases, permanently."

Netherlands**

[Original: English]

Article 2 bis

As mentioned in paragraph 28 of the report of the informal consultations on the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime during the fifth session of the Ad Hoc Committee (A/AC.254/19/Add.1), the Chairman requested the delegation of the Netherlands to submit its proposal to replace the phrase "sexual exploitation" and its definition with a broader definition of slavery for discussion at the sixth session of the Ad Hoc Committee. The following text of article 2 *bis* is submitted pursuant to that request:

"Article 2 bis
"Definitions

"For the purpose of this Protocol:

"(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of abduction, force, fraud, deception, coercion or debt bondage or by giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of slavery, servitude or forced labour. For the purposes of this Protocol, trafficking in persons includes subjecting a child to such trafficking regardless of whether that child has consented;

"(b) 'Slavery' shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;

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* Amendment previously issued in document A/AC.254/5/Add.19.

** Amendment previously issued in document A/AC.254/5/Add.19.

"(c) 'Servitude' shall mean a condition of dependency whereby a person's abuse of power or use of coercion or force restricts the fundamental rights of another person and includes the acts described in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.[1] This definition does not affect the rights, obligations and responsibilities of States, parents and guardians set forth in the Convention on the Rights of the Child;[2]

"(d) 'Forced labour' shall mean [see article 2 *bis* (b) in document A/AC.254/4/Add.3/Rev.4];

"(e) 'Child' shall mean any person under 18 years of age."

Philippines*

[Original: English]

Article 10: Prevention of trafficking in persons

Paragraph 1

1. The Philippines proposes the following amended text:

"1. Each State Party shall establish comprehensive policies, programmes and other measures."

Paragraph 2

2. The Philippines proposes the following amended text for subparagraphs (a) and (b):

"(a) Undertake, including through Governments, non-governmental organizations, intergovernmental organizations, and the private sector, partnerships with communities, especially those at risk of being targeted by traffickers;

"(b) Establish networks for gathering data and promote research, including the compilation of case law on trafficking cases to monitor legal and judicial precedents on trafficking cases internationally;"

Paragraph 3

3. Paragraph 3 should be deleted.

[1] United Nations, *Treaty Series*, vol. 226, p. 3.

[2] General Assembly resolution 44/25, annex.

* Amendments previously issued in document A/AC.254/5/Add.19.

Syrian Arab Republic*

[Original: Arabic]

Article 3: Obligation to criminalize

Paragraphs 1 and 2

1. Add the words ", subject to their fundamental legal principles," after the word "adopt".

Article 17: Entry into force

2. The number of instruments of ratification or accession required to be deposited for the Protocol to enter into force should be the same as the number required for the Convention to enter into force.

Thailand**

[Original: English]

Article 11
Cooperation with non-States Parties

States Parties are encouraged to cooperate with non-States Parties to prevent and punish trafficking in persons and to protect the rights of and care for trafficked persons. To that end, appropriate authorities of each State Party are encouraged to notify, in appropriate cases and when in the best interest of the trafficked person, the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of a non-State Party is in the territory of the State Party.

United States of America***

[Original: English]

Article 2 bis
Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of abduction, force, fraud, deception, coercion [, by debt bondage] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation, forced labour, or [*here would be added any other types of exploitation that the Ad Hoc Committee might agree should be covered by the Protocol*]. For the purposes of this Protocol, trafficking in persons [for the purpose of sexual exploitation] includes subjecting a child to such trafficking regardless of whether the child has consented;

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* Amendments previously issued in document A/AC.254/5/Add.19.

** Amendment previously issued in document A/AC.254/5/Add.19

*** Amendment previously issued in document A/AC.254/5/Add.19.

(b) "Sexual exploitation" shall mean:

(i) Of an adult, [forced] prostitution, sexual servitude or participation in the production of pornographic materials for which the person does not give free and informed consent;

(ii) Of a child, prostitution, sexual servitude or use of a child in pornography;

(c) "Forced labour" shall mean all work or service exacted from any person under the threat or use of force [, directly or indirectly] or through the use of coercion, and for which the person does not give free and informed consent [, except:

(i) In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(ii) Any work or service not referred to in subparagraph (a) of this article that is normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(iii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iv) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(v) Any work or service that forms part of normal civil obligations of the State concerned; or

(vi) Minor communal services of a kind that, being performed by the members of a community in the direct interest of that community, can therefore be considered normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted with regard to the need for such services;]

(d) "Child" shall mean any person under 18 years of age;

(e) "Sexual servitude" shall mean sexual services exacted from any person under the threat or use of force;

(f) [*Definitions would be added for any additional type of conduct that is to be included in the definition of "trafficking in persons", as well as any other terms in the Protocol that need to be defined.*]

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Finalization and approval of the draft United Nations Convention against Transnational Organized Crime

Proposals and contributions received from Governments

Addendum

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* A/AC.254/32.

II. Proposals and contributions received from Governments

Algeria, Egypt, India, Mexico and Turkey

[Original: English]

Algeria, Egypt, India, Mexico and Turkey proposed the following indicative list of offences to be included in an annex to the United Nations Convention against Transnational Organized Crime:

1. Illicit trafficking in narcotic drugs and psychotropic substances.
2. Trafficking in persons, in particular women and children.
3. Illicit trafficking in and transport of migrants.
4. Counterfeiting of currency.
5. Illicit trafficking in or stealing of cultural objects.
6. Illicit trafficking in or stealing of nuclear materials, their use or threat to misuse them.
7. Acts of terrorism as defined in the pertinent international conventions.
8. Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.
9. Illicit trafficking in or stealing of motor vehicles, their parts and components.
10. Illicit trafficking in human organs and body parts.
11. All types of computer and cyber crimes and illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds.
12. Kidnapping, including kidnapping for ransom.
13. Illicit trafficking in or stealing of biological and genetic materials.
14. Extortion.
15. Fraud relating to financial institutions.

France

[Original: French]

Article 2: Scope of application

1. France proposes to add a new paragraph after paragraph 4 of article 2 to read as follows:

"(...) Paragraph 1 of this article shall not be construed as including the element of the transnational nature of an offence in the description of offences established under articles 3, 4, 4 *ter* and 17 *bis* or the element of the involvement of an organized criminal group in the description of offences established under articles 4, 4 *ter* and 17 *bis*."

2. The proposed new paragraph makes it possible, without altering the scope of application of the Convention, as defined in paragraph 1 of article 2, to indicate unequivocally that, while the existence of the elements of an offence's transnational nature and an organized criminal group's involvement is essential to the operation of the Convention, such elements are not relevant to the establishment of the offences themselves.

3. The paragraph is also intended:

(a) To indicate to States Parties that, when incorporating the Convention into their domestic law, they do not have to create:

(i) Any specific offences of laundering of criminal proceeds or corruption or interference with the administration of justice that are transnational in nature and involve an organized criminal group (the first component of paragraph 5); nor

(ii) Any offence of participation in an organized criminal group that is transnational in nature. There is deliberately no mention of the involvement of an organized criminal group, which would be tautological in relation to the offence of participation (the second component of paragraph 5);

(b) To avoid any risk of complication regarding the proof of offences established under the Convention.

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Item 4 of the provisional agenda*
Finalization and approval of the additional international legal instrument against trafficking in and transporting of migrants

Proposals and contributions

Addendum

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* A/AC.254/35.

II. Proposals and contributions

Argentina*

[Original: Spanish]

Argentina proposes that the following section be inserted after article 7 and the subsequent sections renumbered accordingly:

"*Article (...)*

"1. States Parties shall make provision in their respective legislations to establish the liability of commercial overland carriers for the transport of passengers and crew members, in conformity with the immigration law of the country of destination or transit. To that end, the legislation of States Parties shall provide that commercial overland carriers shall, as an absolute prerequisite for undertaking the carriage, demand all due documentation required for admission of their passengers to the territory of the State of destination or transit in any of the categories of admission stipulated in domestic immigration law.

"2. States Parties shall establish in their domestic legislation the obligation for commercial overland carriers, in cases of transit through one or more States, to declare the names of passengers whom they are transporting to the immigration authority competent for the latter. States Parties shall also adopt measures in their domestic legislation to render the commercial overland carrier responsible for the actual exit of such persons from the corresponding territories and shall provide that, in the event that passengers declared as being transported fail to leave the country in the manner, at the place and within the time limit stipulated in the immigration law of the transit country, the immigration authority of that country may arrange for the return of such persons at the exclusive cost of the carrier.

"3. It shall be possible for the provisions of this article not to apply within the territorial scope of economic unions, customs unions or free-trade zones that have specific regulations governing the entry into and movement of persons within such integrated geographical areas that do not conform to the provisions of this article.

"4. Any State Party that has sufficient grounds to believe that a commercial overland carrier is involved in activities related to trafficking in migrants may request the necessary assistance to counter such activities from the State Party in which that carrier is lawfully constituted, or in which the vehicles used by such carrier in the provision of its services are situated or registered, or in which such carrier has its actual place of business, in conformity with the legal provisions of the country concerned.

"5. States Parties shall establish ongoing cooperation mechanisms for the detection of any carriage of persons, from one country to another or in transit to a third country, undertaken by persons on an individual or organized, regular or occasional basis without due authorization, by a means of overland transport.

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* Amendment previously issued in document A/AC.254/5/Add.24.

"6. States Parties shall establish institutional cooperation mechanisms for the detection and punishment of freight carriers who engage in the smuggling of migrants.

"7. States Parties shall offer the fullest assistance with regard to the investigation of methods of overland trafficking coming within their jurisdiction. Authorities involved shall act with all due diligence in order to ensure that such assistance is furnished expeditiously with a view to avoiding any impairment of such cooperation."

Azerbaijan*

[Original: Russian]

1. The Criminal Code of Azerbaijan contains no provision regarding either the smuggling of migrants or, indeed, of persons in general.

2. It is proposed that the titles of the 1951 Convention and 1967 Protocol mentioned in the preamble and in the text of the draft protocol should be given in full.

Article 1: Relation to the United Nations Convention against Transnational Organized Crime

3. It is proposed that option 1 be retained.

Article 15: Return of smuggled migrants

4. In order to determine material liability in connection with the deportation process, it is proposed that the following text be added to article 15:

"States Parties agree that all expenses incurred as a result of the temporary accommodation or deportation (return) of a person who has been smuggled into the territory of a State Party shall be recoverable from the carrier or transportation company that transported that person into the territory of the State Party."

Cameroon**

[Original: French]

Article 8: Compliance measures and arrangements

Paragraph 2 (a)

1. Delete the word "illegal" before the word "smuggling", the adjective being redundant.

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* Amendment previously issued in document A/AC.254/L.200.

** Amendment previously issued in document A/AC.254/5/Add.24.

Article 11: Prevention

Paragraph 1

2. Delete the words "and seizing", since the operation of inspection is deemed sufficiently rigorous for the prevention stage.

Article 14: Training

Paragraph 3

3. Paragraph 3 should become a new article and read as follows:

"*Article (...)*
"*Technical cooperation*

"Each State Party shall make every effort to provide the necessary resources, including vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise shall provide technical assistance to States lacking such expertise."

Article 15: Return of smuggled migrants

Paragraph 1

4. It would be advisable to reword this paragraph in the light of international human rights standards, the economic potential of each State and the length of stay of each migrant.

China*

[Original: English]

New article

After article 11, add a new article as follows:

"*Article (...)*
"*Measures to eliminate the root causes*

"States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment."

Colombia*

[Original: Spanish]

Preamble

1. It is proposed to amend preambular paragraph (i) to read as follows:

* Amendment previously issued in document A/AC.254/5/Add.24.

"(i) *Also convinced* that, to counter this phenomenon, a global and regional approach, including socio-economic measures, is necessary in order to improve the situation of vulnerable population groups in the countries of origin,"

2. It is proposed to add a new preambular paragraph after paragraph (k) as follows:

"(...) *Taking note* of the conventions and other relevant instruments of the United Nations on the protection of migrants,"

Article 11: Prevention

3. It is proposed to add a new paragraph after paragraph 2 as follows:

"(...) With a view to discouraging and preventing the smuggling of migrants, States Parties shall seek, where appropriate, to conclude bilateral or multilateral agreements aimed at ensuring orderly migration."

Germany*

[Original: English]

Article 10: Information

Paragraph 3

After the words "States Parties", add the words ", in particular those with common borders or located along smuggling routes,".

Holy See*

[Original: English]

Article 11: Prevention

The following paragraphs should be added at the end of the article:

"(...) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

"(...) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants."

* Amendment previously issued in document A/AC.254/5/Add.24.

India*

[Original: English]

Article 4: Criminalization

Paragraph 2

Replace paragraph 2 with the following:

"2. Each State Party shall also adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraphs 1 and 2 of this article;

"(b) Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"(c) Participating as an accomplice in an offence set forth in this article; or

"(d) In any other way contributing to the commission of an offence set forth in this article."

Libyan Arab Jamahiriya**

[Original: Arabic]

Article 8: Compliance measures and arrangements

Paragraph 2

1. The Libyan Arab Jamahiriya suggests the deletion of subparagraph (b), because enhancing the provisions of the Protocol will be a sine qua non once the Protocol comes into force, so there will be no need for such a provision.

Article 10: Information

Paragraphs 1 and 2

2. Paragraphs 1 and 2 should be merged, because their meaning is identical. The revised paragraph should read as follows:

"(...) Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information with a view to preventing potential migrants from becoming victims of criminal organizations by increasing public awareness of the fact that smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to those involved."

3. In subparagraph (e), the word "also" should be added after the words "practices and".

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* Amendment previously issued in document A/AC.254/5/Add.24.

** Amendments previously issued in document A/AC.254/5/Add.24, based on the text of the revised draft Protocol contained in document A/AC.254/Add.1/Rev.2.

Article 14: Training

Paragraph 2

4. Subparagraph (a) should be deleted because it duplicates article 12.

Paragraph 3

5. The words "potential tools" should be used instead of the word "resources", because the articles listed in the text are not resources but potential tools.

Article 15: Return of smuggled migrants

Paragraph 1

6. Add at the end of the paragraph the words "whenever such return poses no risk to his or her life and protects him or her from any illegal harm that might be incurred upon return".

Article 16: Implementation

7. Paragraphs 1 and 2 should be merged to read:

> "For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention. States shall provide such reports together with the reports submitted in accordance with article 23 of the Convention and on the same dates."

Lithuania*

[Original: English]

Article 10: Information

Paragraph 2

1. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

2. In the opinion of Lithuania, the use of the term "victim" raises some doubts. The term "victim" suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling of migrants.

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* Amendments previously issued in document A/AC.254/5/Add.24.

Mexico

[Original: Spanish]

1. It is proposed to add the following paragraphs after article 3 *bis*:*

"2. The relatives of the migrant shall not become punishable for acts committed by an organized criminal group of which the relative is not a member whose purpose is the illegal trafficking in and transporting of that migrant.

"3. The relatives of the migrant shall not become punishable by reason of the profits obtained by an organized criminal group from those relatives as a result of the illegal trafficking in and transporting of that migrant."

Article 8: Compliance measures and arrangements**

2. Mexico proposes to add the following new paragraph after paragraph 2:

"(...) If two or more States Parties have already concluded an agreement or treaty in respect of a subject that is dealt with in this Protocol or otherwise have established their relations in respect to that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of this Protocol."

Syrian Arab Republic*

[Original: Arabic]

Preamble

1. Remove the square brackets in preambular subparagraphs (a), (c), (d), (f)-(h), (o) and (q).

2. After preambular subparagraph (q), add a new subparagraph similar to the final subparagraph of the preamble of the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking in Persons Protocol"), to read as follows:

"(...) *Taking into account* the provisions of the United Nations Convention against Transnational Organized Crime,"

Article 6: Jurisdiction

Paragraph 1

3. Add the words "in accordance with their basic legal principles" after the words "shall take".

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* Amendment previously issued in document A/AC.254/5/Add.24.

** Amendment previously issued in document A/AC.254/L.208.

Article 8: Compliance measures and arrangements

Paragraph 1

4. Add the words "in accordance with their basic legal principles" after the word "adopt".

Paragraph 2

5. Delete the word "illegal" in subparagraph (a), because trafficking is per se an illegal act.

Article 11: Prevention

6. The Syrian Arab Republic endorses the two new paragraphs proposed by the Holy See for addition to this article (see above under Holy See).

Article 11 bis

7. The Syrian Arab Republic endorses the new article proposed by China (see above under China).

Additional articles

8. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the Trafficking in Persons Protocol;

(b) Status of the victim in the receiving State, in line with article 5 of the Trafficking in Persons Protocol;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the Trafficking in Persons Protocol.

European Community*

[Original: English and French]

Article 11: Prevention

1. It is proposed that article 11 be revised to read as follows:

"*Article 11*
"*Prevention*

"1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels.

* Amendment previously issued in document A/AC.254/L.198.

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying cooperation with border control agencies of other States, in particular by establishing and maintaining direct channels of communication.

"3. With a view to facilitating effective coordination between their competent border control agencies, States Parties may conclude bilateral arrangements or agreements providing for the posting of liaison officers."

2. The above proposal for article 11 seeks to ensure greater consistency with the text of article 8, paragraph 1, of the draft Trafficking in Persons Protocol. Moreover, paragraph 3 of the proposal is to replace the new paragraph for article 11 proposed by the Netherlands in document A/AC.254/5/Add.24.

United Nations A/AC.254/5/Add.28

General Assembly

Distr.: General
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Original: Arabic/English/
French/Spanish

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

Eleventh session
Vienna, 2-27 October 2000
Item 3 of the provisional agenda*
Finalization and approval of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions

Addendum

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* A/AC.254/35.

II. Proposals and contributions

Belgium*

[Original: French]

Preamble

1. The following new preambular paragraph should be added:

"*Bearing in mind* that the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others[1] emphasizes, *inter alia*, that prostitution and the accompanying evil of trafficking in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,"

Article 13: Saving clause

Paragraph 1

2. The words "and the principle of non-refoulement as contained therein" should be added to the end of paragraph 1, thereby making the paragraph identical with article 15 *bis* of the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol").

China**

[Original: English]

New article

After article 10, add a new article to read as follows:

"*Article (...)*
"*Measures to eliminate trafficking in women and children [persons]*

"1. States Parties shall, through bilateral and multilateral cooperation, adopt such measures as they deem effective to eliminate the consumer market that nurtures transnational trafficking in women and children [persons, especially women and children].

"2. States Parties shall ensure the strengthening of international cooperation to eliminate the root causes of the vulnerability of women and children [persons, especially women and children,] to such trafficking, such as poverty and underdevelopment."

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* Amendment previously issued in document A/AC.254/L.201.

** Amendments previously issued in document A/AC.254/5/Add.25.

[1] United Nations, *Treaty Series*, vol. 96, No. 1342.

Holy See*

[Original: English]

Article 3: Obligation to criminalize

1. Add two new paragraphs to read as follows:

"(...) States Parties shall foster regional cooperation with non-States Parties in order to achieve greater uniformity in the definition, prevention and punishment of international trafficking in persons, as well as in the protection of victims.

"(...) States Parties shall consider facilitating the application of the principle of extraterritoriality in the legal pursuit of crimes relating to trafficking in persons."

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 3

2. Amend paragraph 3 to read as follows:

"3. In appropriate cases and to the extent possible, States Parties shall consider implementing measures, in cooperation with non-governmental organizations and local communities, to provide for the physical, psychological and social recovery of and, when requested, spiritual assistance to victims of crimes covered by this Protocol and, in particular:

"(a) ...;

"(b) ...;

"(c) ...;

"(d) Employment, educational and training opportunities, in a manner appropriate to their age, gender and special needs."

Italy**

[Original: English]

1. Italy would like to strengthen the provisions concerning social assistance to and protection of victims. It is therefore proposed to devote an article to "Protection of human rights and social assistance" and a separate article to "Fair treatment and protection of trafficked persons". A more detailed version of article 5, related to residence status, is also proposed. The Italian proposals incorporate language from the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997).

2. Articles 3 *bis*, 4 and 5 should be amended to read:

* Amendments previously issued in document A/AC.254/L.196.

** Amendments previously issued in document A/AC.254/5/Add.25.

"*Article 3 bis*

"*Protection of human rights and social assistance*

"1. States Parties shall protect the human rights of trafficked persons, as defined in the Universal Declaration of Human Rights[2] and the International Covenant on Civil and Political Rights,[3] and ensure that they may be exercised without discrimination on any ground such as race, colour, sex, language, religion (disability, age, sexual orientation),[4] political or other opinion, national or social origin, property, birth or other status.[5]

"2. In addition to measures adopted pursuant to article 4 of this Protocol, each State Party shall consider providing, in cooperation with non-governmental organizations, as appropriate:

"(a) Safe housing;

"(b) Counselling and information, in the mother tongue of the trafficked persons or in another language they can speak and understand, in particular as regards their legal rights;

"(c) Material, psychological and economic assistance;

"(d) Work, education and training opportunities.

"*Article 4*

"*Fair treatment and protection of trafficked persons*

"1. ...;

"2. Each State Party shall endeavour to provide, as appropriate, before, during and after all criminal, civil or other legal proceedings:

"(a) ...;

"(b) ...;

"(c) Appropriate measures to protect trafficked persons who act as a witness and, where necessary, their families living on its territory;

"(d) A change of identity, where necessary, if the threat is extremely serious.

"3. States Parties are encouraged to develop bilateral and multilateral agreements aimed at protecting trafficked persons and their families in countries of origin, transit and destination.

"4. In addition to measures provided pursuant to article 8 of this Protocol, States Parties shall to the extent possible under their domestic law:

"(a) Provide for the notification of victims, upon their request, of any form of release from custody or detention of persons arrested for or convicted of trafficking;

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[2] General Assembly resolution 217 A (III).

[3] See General Assembly resolution 2200 A (XXI), annex.

[4] Language from article 13 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts.

[5] Including their status as victims of trafficking, as illegal migrants or prostitutes.

"(b) Develop methods of investigation, detection and gathering of evidence that minimize intrusion into the private life of the trafficked person and are free from gender bias;

"(c) Establish, whenever possible, specialized police and prosecutorial units trained to deal with gender issues and sensitivities of the victim of trafficking, especially children.

"*Article 5*

"*Residence status of trafficked persons*

"1. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider enacting immigration laws or adopting other measures that will grant the trafficked person, in appropriate cases, temporary or permanent residence status, including the possibility of gainful employment.

"2. ... .

"3. A trafficked person shall be given the opportunity to produce evidence in support of a claim that repatriation could seriously endanger his or her life."

Japan

[Original: English]

Article 2 bis: Definitions

Delete subparagraph (b), and add the following at the end of the article (or elsewhere as appropriate):

"Where a child is involved, States Parties shall take into consideration, to the widest extent possible, his or her age, vulnerability, maturity, both physical and mental, family ties and any other elements relevant to the purpose of this Protocol."

Mexico*

[Original: Spanish]

Article 3: Obligation to criminalize

1. The following new wording is proposed:

"1. States Parties that have not done so shall adopt such legislation and other measures as are necessary to establish as criminal offences the conduct referred to in article [...] of this Protocol and to impose penalties that take into account the grave nature of such conduct.

"2. To the extent permitted by domestic law, intentional participation in any of the unlawful acts referred to in article [...] of this Protocol shall also be punishable."[6]

* Amendments previously issued in document A/AC.254/5/Add.25.

[6] The wording of this paragraph is based on that of article 4 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Article 4: Assistance for and protection of victims of trafficking in persons

Title

2. It is proposed that the title of article 4 be replaced with the following: "Compensation and restitution to victims".

3. The following new wording is proposed:

"1. In appropriate cases and to the extent permitted by its domestic law, each State Party:

"(a) Shall prevent any form of punishment from being imposed on persons, in particular women and children, who are victims of international trafficking;

"(b) Shall ensure that victims of trafficking in persons, especially women and children, receive adequate protection;

"(c) Shall inform victims of crimes covered by this Protocol about the relevant court and administrative proceedings;

"(d) Shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons;

"(e) Shall assist victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

"(f) Shall provide appropriate housing, economic assistance and psychological, medical and legal support for victims of crimes covered by this Protocol;

"(g) Shall provide appropriate housing, education and care for children in governmental custody;

"(h) Shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

"2. In addition to the measures provided for in article 7 of this Protocol, each State Party that has not already done so shall enact immigration laws and/or adopt legislative or administrative measures that will enable identified victims of trafficking within its territory, after due consideration is given to humanitarian factors, to remain in its territory temporarily or, where appropriate, permanently."[7]

Article 5: Status of the victim in the receiving State

4. It is proposed that the text of article 5 be merged with that of article 4 as indicated above. Article 5 would thus be deleted.

Article 8: Border measures

5. It is proposed that the title and text of article 8 be replaced with the following:

[7] Text based on a proposal by France and the United Kingdom of Great Britain and Northern Ireland, amended by Mexico and Morocco.

"Article 8
"Training

"All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area."

Philippines*

[Original: English]

Article 10: Prevention of trafficking in persons

Paragraph 1

1. The Philippines proposes the following amended text:

"1. Each State Party shall establish comprehensive policies, programmes and other measures."

Paragraph 2

2. The Philippines proposes the following amended text for subparagraphs (a) and (b):

"(a) Undertake, including through Governments, non-governmental organizations, intergovernmental organizations and the private sector, partnerships with communities, especially those at risk of being targeted by traffickers;

"(b) Establish networks for gathering data and promote research, including the compilation of case law on trafficking cases to monitor legal and judicial precedents on trafficking cases internationally;"

Paragraph 3

3. Paragraph 3 should be deleted.

Syrian Arab Republic**

[Original: Arabic]

Article 3: Obligation to criminalize

Paragraphs 1 and 2

Add the words ", subject to their fundamental legal principles," after the word "adopt".

* Amendments previously issued in document A/AC.254/5/Add.25.
** Amendments previously issued in document A/AC.254/5/Add.25.

Thailand

[Original: English]

Article 11: Cooperation with non-States Parties

Thailand proposes to replace article 11 with the following:

"States Parties are encouraged to cooperate with non-States Parties to prevent and punish trafficking in persons and to protect the rights of and care for trafficked persons. To that end, appropriate authorities of each State Party are encouraged to notify, in appropriate cases and when in the best interest of the trafficked person, the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of a non-State Party is present in the territory of the State Party."

European Community*

[Original: English and French]

Article 8: Border measures

1. It is proposed that article 8 be revised to read as follows:

"*Article 8*
"*Border measures*

"1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels.

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying cooperation with border control agencies of other States, in particular by establishing and maintaining direct channels of communication.

"3. States Parties shall take legislative or other appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 3 of this Protocol.

"4. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, ascertain that all passengers travelling by land, sea or air are in possession of the travel documents required for legal entry into the receiving State.

"5. ... .

"6. ... .

2. The present proposal seeks to ensure greater consistency with the text of articles 9 and 11 of the Migrants Protocol.

* On behalf of Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden. Amendments previously issued in document A/AC.254/L.197.

Secretariat*

[Original: English]

Article 14: Relation with the Convention

It is proposed to replace article 14 with the following in order to establish a link between the Protocol and the Convention:

"1. This Protocol is supplementary to the United Nations Convention against Transnational Organized Crime.

"2. No State shall become a Party to this Protocol unless it also becomes a Party to that Convention.

"3. The provisions of [articles [...] of] the Convention shall also apply *mutatis mutandis* to this Protocol."

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* Amendment submitted at the request of the Chairman and previously issued in document A/AC.254/L.204.

United Nations A/AC.254/5/Add.29

General Assembly

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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

Eleventh session
Vienna, 2-27 October 2000
Item 3 of the provisional agenda*
Finalization and approval of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions received from Governments

Canada: amendment to article 7 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Article 7

Paragraph 1

1. In the *chapeau* of paragraph 1, Canada proposes to replace the words "Law enforcement authorities" with "Law enforcement, immigration or other relevant officials".

2. The rationale is to expand the scope of information exchange beyond law enforcement agencies alone. There are many agencies other than law enforcement agencies, such as immigration and customs agencies, that collect data that could be helpful in combating trafficking in persons. The new language would be consistent with the language that appears in article 7, paragraph 2, and the approach adopted in article 19, "Law enforcement cooperation", of the draft United Nations Convention against Transnational Organized Crime.

* A/AC.254/35.

United Nations A/AC.254/5/Add.30

General Assembly

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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

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Item 5 of the provisional agenda*

Finalization and approval of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

Proposals and contributions received from Governments

Addendum

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* A/AC.254/35.

II. Proposals and contributions received from Governments

Australia, Norway and Switzerland*

[Original: English]

Article 11: General requirements for export, import and transit licensing or authorization systems

Paragraph 2

The following text is proposed for paragraph 2:

"2. States Parties, before issuing export licences or authorizations, shall ensure that all firearms to be exported are marked in accordance with article 9 of this Protocol."

Canada**

[Original: English]

Article 7: Confiscation or forfeiture

It is proposed that article 7 be amended to read:

"*Article 7*

"*Confiscation and forfeiture*

"1. States Parties shall undertake to confiscate or to require forfeiture of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

"2. States Parties shall adopt the necessary measures to ensure that no firearms, their parts and components and ammunition seized, confiscated or forfeited as a result of illicit manufacturing or trafficking fall into the hands of private individuals or businesses through auction, sale or other disposal.

"3. States Parties shall ensure that confiscated and forfeited firearms that are retained for official use are marked and that the marking is recorded."

China***

[Original: Chinese and English]

Article 9: Marking of firearms

Paragraph 1 (a)

1. Manufacturers in China are obliged by law to put the appropriate marking on every firearm at the time of its production, regardless of what the firearm is destined to be used

* Amendment previously issued in document A/AC.254/L.167.

** Amendment previously issued in document A/.AC.254/L.157.

*** Amendments previously issued in document A/AC.254/5/Add.22.

for (i.e. whether it is for military use or civilian use). However, markings may differ depending on what the firearms are to be used for. China is of the view that the criteria for determining what is an appropriate marking should be whatever enables the competent agency of a State Party to trace the source of the firearm. Therefore, it would be sufficient to require the marking to include the country of manufacture while leaving it to each State Party to decide what other information should be included in the marking. To make it more convenient to identify the country of manufacture, a universal system of country codes could be considered.

Paragraph 1 (b)

2. China does not require the marking of imported firearms. More consideration and discussion should be given to the provision in paragraph 1 (b) as it appears now. Bearing in mind the various practices in different countries concerning imported firearms, it might be sufficient for firearms to bear unique and identifiable markings that are recorded in full during the process of exporting and importing the firearms. Thus, paragraph 1 (a) of article 9, in combination with paragraph 1 (a) of article 8, could solve the problem of tracing imported firearms, thus relieving States Parties of the task of having to make changes in their current legislation and practices. In any case, the importing countries could decide whether to mark the imported firearms or not following their importation.

Article 11: General requirements for export, import and transit licensing or authorization systems

3. As for article 11, China has no particular difficulty with the requirements regarding export and import, but it has reservations with regard to transit licensing and retransfer authorization as the relevant provisions need to be clarified further. First and foremost, the definition of "transit" itself needs further clarification. In the view of China, the requirement of transit licensing inevitably imposes a heavier burden on the transit country. Besides, whether it is the importer or the exporter who should apply for the transit licence is not clear in the current provision. The relationship between transit and trans-shipping also needs clarification.

4. With regard to the requirement for written approval from the exporting country prior to re-export or retransfer, China is of the view that how to dispose of the imported firearms is the sovereign right of the importing country because, in general, once goods are delivered to the importer, the right of ownership is passed on to the importer, who in turn is responsible for the disposition of the goods. End-user certification could help to prevent the re-export or retransfer of firearms without the approval of the exporting country.

Article 14: Exchange of information

Paragraph 1

5. In paragraph 1, China proposes to add the words "and taking into account their legitimate security or commercial concerns," after the words "applicable to them".

Article 17: Confidentiality

6. China proposes to modify the last sentence in article 17 to read as follows:

> "If for legal reasons such confidentiality cannot be maintained, the State Party that is to provide the information shall be notified prior to its provision of the information."

Colombia*

[Original: English]

Preamble

1. It is proposed that a new paragraph be added to read as follows:

"(...) *Convinced* that the illicit international trade in firearms, their parts and components, ammunition, explosives and other related materials constitutes a specific risk to the security and well-being of States Parties and that measures to promote further cooperation among States Parties, in particular by the promotion of harmonized controls over the legal import and export of firearms, their parts and components, ammunition, explosives and other related materials and of procedures for applying them, will assist in preventing and eradicating such illicit trade."

Article 5: Criminalization

2. The following new subparagraphs should be added to paragraph 1:

"(...) The purchase or possession of illicitly manufactured or trafficked firearms, their parts and components, ammunition, explosives and other related materials;

"(...) The organization, management or financing of the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials."

3. Paragraph 2 should be amended to read as follows:

"2. The participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Protocol shall also be considered criminal offences."

4. Paragraph 3 should be amended to read as follows:

"3. Each State Party shall make the person or persons who commit any of the offences established in accordance with this Protocol subject to criminal sanctions that take into account the grave nature of the offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation. This provision should be interpreted without prejudice to the administrative, civil and other forms of sanctions that may apply."

5. The following new paragraphs should be added:

"(...) States Parties shall ensure that their courts and other competent authorities having jurisdiction over the offenders under this Protocol take into account, when prosecuting such offenders, factual circumstances that make the commission of offences established in accordance with this Protocol particularly serious, such as:

"(a) Involvement in the offence of an organized criminal group to which the offender belongs;

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* Amendments previously issued in document A/AC.254/5/Add.22.

"(b) Involvement of the offender in other international organized criminal activities;

"(c) Involvement of the offender in other illegal activities facilitated by the commission of the offence;

"(d) The violent use of illicitly trafficked arms and explosives by the offender;

"(e) The fact that the offender holds a public office, whether or not the offence is connected with the office in question;

"(f) The use of minors in the commission of an offence listed in this article.

"(...) States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences established in accordance with this Protocol and the circumstances described in article 5, paragraph 4, of this Protocol when considering the sanctions to be imposed on the offender.

"(...) Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of the legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Article 8: Record-keeping

6. The following new paragraph should be added:

"(...) States Parties that already possess computerized information systems and the associated technical competence and expertise shall agree to share that technology and knowledge with interested participating States Parties, in order to facilitate and harmonize record-keeping and information-sharing."

Article 9: Marking of firearms

7. The title of article 9 should read "Marking of firearms, ammunition and explosives".

8. The following new subparagraphs should be added to paragraph 1:

"(...) Require appropriate markings to be applied to ammunition, by head-stamping or embossing on the base of each cartridge case during the manufacturing process numbers, letters, trademarks, symbols or other codes used to identify the country or factory of origin, the year of production, the lot number and the calibre;

"(...) Require appropriate markings on the packaging of ammunition and explosives (military explosives, commercial explosives and their associated accessories, including detonators and blasting caps), including detailed information about their designation, nature, calibre, type, manufacturer, year and lot of manufacture, as well as other codes associated with transport and storage safety."

Article 11: General requirements for export, import and transit licensing or authorization systems

9. The following new paragraphs should be added:

"(...) Pursuant to article 3, subparagraph (c), of this Protocol, harmonized measures and procedures for monitoring and controlling the international movement of firearms, their parts and components, ammunition, explosives and other related materials include the following documentation:

"(a) Export certificates. An export certificate shall accompany each shipment. Each export certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(b) Export attachment. The export attachment shall contain information required by all States, with the serial numbers of the firearms, their parts and components, ammunition, explosives and other related materials being shipped, within each classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, and specifying all shipping modes and shippers, as outlined in the annex to this Protocol;

"(c) Import certificate. An import certificate shall be given to an applicant who meets the applicable domestic legal requirements and provides the applicable information. The import certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(d) In-transit shipment authorization. The competent authority of an in-transit country shall issue an in-transit shipment authorization to an applicant who meets the pertinent domestic legal requirements, who provides the information required and who supplies an original or a certified copy of the import certificate issued by the country of final destination and an original or a certified copy of the export certificate and export attachment, as described in article 5 of this Protocol and outlined in the annex to this Protocol;

"(e) Verifying competent authority. Where applicable, the importing country shall release the shipment to the person who satisfies the competent authority that he or she is the authorized representative identified on the import certificate, upon confirming that the contents of the shipment and the identity of the importer or final recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements.

"(...) The following general conditions shall apply to all certificates, attachments and authorizations:

"(a) *Validity period for import certificates, export certificates and attachments and in-transit shipment authorization.* Each import certificate shall specify an expiry date (generally considered to be one year from the date of issue). Each export certificate and export attachment and in-transit shipment authorization shall specify a maximum validity period that shall not extend beyond the expiry date of the import certificate;

"(b) *No extension of the validity period.* The validity period of all certificates, attachments and authorizations granted shall not be extended. Upon expiry of the validity period of a certificate, attachment or authorization, a new application must be submitted;

"(c) *Authorized quantities.* All import certificates, export certificates or attachments, or in-transit shipment authorizations shall indicate the authorized quantities of each type of firearm, parts and components or ammunition and explosives, as the case may be, duly identified by its applicable form of classification and description, that may be shipped pursuant to those documents;

"(d) *Authenticity of certificates and other documents.* To ensure the authenticity of all certificates, attachments and authorizations and any other

documentation required to be submitted to authorities under these regulations, only original and certified copies shall be accepted or, if agreed to by the competent authorities of the countries concerned, the documentation may be transmitted by electronic means;

"(e) *Modification of certificates and other documents*. The modification of certificates, attachments and authorizations shall only be permitted to be made by the competent authority within the validity period and with respect to the following matters:

"(i) For all certificates: the country of origin of firearms, their parts and components, ammunition, explosives and other related materials for export;

"(ii) For export attachments and in-transit shipment authorizations: planned shipment information, shipping routes, ports of entry and exit, modes of shipment, shipping dates and shippers for individual shipments;

"(iii) All changes except [...] shall require authentication, such as stamps, seals and authorized signatures, on the front side of the modified certificates or other documents.

"(...) The steps to be followed for the exportation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the country of export may issue an export certificate to an applicant who:

"(i) Meets the applicable domestic legal requirements;

"(ii) Provides the applicable information outlined in the annex to this Protocol; and

"(iii) Supplies the original or a certified copy of the import certificate referred to in article [5] of this Protocol;

"(b) The competent authority shall only authorize the export of firearms, their parts and components, ammunition, explosives and other related materials pursuant to an export certificate when the applicant provides to the competent authority the export attachment information outlined in the annex to this Protocol. The export attachment information may be provided on a portion of the export certificate or on an export attachment;

"(c) Where the firearms, their parts and components, ammunition, explosives and other related materials are to pass through an in-transit country or countries before reaching the country of final destination, the exporter shall also provide to the verifying agency of the country of export an in-transit shipment authorization from each in-transit country;

"(d) The competent authority shall send the original or a certified copy of the export certificate and export attachment, including the information outlined in the annex to this Protocol, to the verifying agency of the importing country and, where applicable, to the competent authority of each in-transit country;

"(e) The shipper identified by the exporter on the export attachment shall present the firearms, their parts and components, ammunition, explosives and other related materials, together with the original or a certified copy of the export

certificate and export attachment, to the verifying agency of the exporting country and, upon verification by the latter, the shipment may be exported.

"(...) The steps to be followed for the importation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the importing country may issue an import certificate to an applicant who meets the applicable domestic legal requirements and who provides the applicable information outlined in the annex to this Protocol;

"(b) The importer shall provide an original or certified copy of the import certificate to the exporter for presentation to the competent authority of the country of export, as required under article [5] of this Protocol;

"(c) The verifying agency of the importing country, upon confirming that the contents of the shipment and the identity of the importer or final recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements, shall release the shipment to the person who satisfies the verifying agency that he or she is the authorized representative identified on the import certificate.

"(...) Steps to be followed for an in-transit shipment are:

"(a) The competent authority of an in-transit country may issue an in-transit shipment authorization to an applicant who meets the applicable domestic legal requirements, who provides the information outlined in the annex to this Protocol and who supplies the following documents:

"(i) An original or a certified copy of the import certificate issued by the country of final destination; and

"(ii) An original or a certified copy of the export certificate and export attachment described in this article;

"(b) The recipient of the in-transit shipment authorization shall provide an original or certified copy of the authorization to the exporter for presentation to the verifying agency of the country of export, as required under this article;

"(c) The verifying agency of the in-transit country, upon confirming that the contents of the shipment and the identity of the shipper are in accordance with the information specified in the import certificate, export certificate, export attachment and in-transit authorization and that domestic legal requirements have been met, shall permit the in-transit passage of the shipment."

Article 14: Exchange of information

10. The following new paragraphs should be added:

"(...) Each State Party shall designate a central information office to receive and fulfil information requests from participating countries concerning import, export and in-transit shipment transactions of firearms, their parts and components, ammunition, explosives and other related materials. Where the information is required for judicial proceedings, it shall be provided on a basis consistent with existing agreements for such purpose.

"(...) Information on all known aspects of activities relating to the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials shall be provided to and collected by the International Criminal Police Organization for access by participating countries. If possible, States Parties shall make this information available in electronic form to facilitate the tracing and confiscation of the weapons and the capture of the offender."

Article 15: Cooperation

11. The following new paragraph should be added:

"(...) For the purpose of cooperation among States Parties to this Protocol, including, in particular, cooperation under article 9 of this Protocol, offences established in accordance with article 5, paragraph 1, of this Protocol shall not be considered fiscal offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic laws of the States Parties."

Article 18 bis: Registration and licensing of brokers

12. The title of article 18 *bis* should be amended to read "Registration and licensing of brokers, retailers and transportation agents".

13. The text of the article should be replaced with the following:

"To prevent and combat the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials, each State Party shall regulate and monitor, when applicable, legitimate commercial activities by licensing and registering all persons of its nationality who engage in such transactions, such as:

"(a) Retailers and wholesalers who buy and sell firearms, their parts and components, ammunition, explosives and other related materials;

"(b) Brokers who arrange such transactions (that is, persons who gain material benefit from financing or facilitating such transactions);

"(c) Transportation agents who arrange for the delivery of such goods (that is, persons who ensure the transportation of the goods so that the transactions may be completed)."

Annex

14. The following annex should be added:

"Annex

"1. All import certificates, export certificates or attachments or in-transit shipment authorizations shall indicate the authorized quantity of each type of firearm, parts and components, ammunition, explosives and other related materials (listed by classification and description) that may be shipped pursuant to those documents, as outlined in this annex.

"Export certificates

"2. Each export certificate shall contain the following information:

"(a) Domestic export certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing office's name and signature;

"(e) Exporter identification: the exporter's name, address, telephone number and facsimile number and the representative's name (if the exporter is a commercial body) and signature;

"(f) Exportation authorization: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for export, listed by classification and description;

"(g) Certificate expiry date: date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be shipped pursuant to the export certificate or the date of expiry of the certificate, whichever is earlier;

"(h) Importing country information (domestic import certificate): the name of the country of issuance, the date of issuance of the certificate, the competent authority, the importer and final recipient, the authorized quantity of firearms, their parts and components, or ammunition and explosives, and other related materials to be imported and the certified expiry date;

"(i) Importer identification: the importer's name, address, country code of residence and citizenship (if the importer is an individual) and the representative's name (if the importer is a commercial or government body);

"(j) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, country code of residence and citizenship if the final recipient is an individual and the representative's name if the final recipient is a commercial or government body;

"(k) Country of origin of the firearms, parts and components, ammunition, explosives and other related materials: the name or unique country code;

"(l) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) shipped to date pursuant to the export certificate;

"(m) Additional descriptive information concerning the firearms, parts and components that is required in some countries, such as barrel length, overall length, action, the number of shots, the manufacturer's name and the country of manufacture.

"Export attachments

"3. Each export attachment shall contain the following information:

"(a) Shipment information: the serial numbers of the firearms, parts and components, ammunition, explosives and other related materials (where applicable) being shipped, listed by classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, specifying all shipping modes and shippers;

"(b) For each shipper identified above: the shipper's name, address, telephone number and facsimile number, and the representative's name and signature (if the shipper is a commercial or government body);

"(c) Information on prior shipments, if any, made against the export certificate and the dates of exit of previous shipments: the quantity of the firearms, parts and components, ammunition, explosives and other related materials involved (listed by classification and description) in each shipment, the cumulative quantity of all shipments sent prior to this shipment and the shipper's name.

"Import certificates

"4. Each import certificate shall contain the following information:

"(a) Domestic import certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing officer's name and signature;

"(e) Importer identification: the importer's name, address, telephone number, facsimile number and country of residence and, if the importer is a commercial or government body, the representative's name, citizenship and signature;

"(f) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, telephone number, facsimile number and country of residence and, if the final recipient is a commercial or government body, the representative's name, citizenship and signature;

"(g) Importation authorized: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for import, listed by classification and description;

"(h) Certificate expiry date: the date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be imported pursuant to the import certificate or the date of expiry of the certificate, whichever is earlier;

"(i) Export country information: the name of the country of export;

"(j) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile

number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) received to date pursuant to the import certificate;

"(k) Additional descriptive information concerning the firearms or parts and components: barrel length, overall length, the number of shots, the manufacturer's name and the country of manufacture.

"In-transit shipment authorizations

"5. Each in-transit shipment authorization shall contain the following information:

"(a) Country information: domestic in-transit authorization identifier; the country of issuance, identified by name or by a unique country code; the date of issuance; and competent authority identification, including the competent authority's name, address, telephone number and facsimile number;

"(b) Identification of the applicant: the applicant's name, address, country of residence, telephone number and facsimile number and the representative's name and signature if the applicant is a commercial or government body;

"(c) Authorization of the in-transit shipment: for each country, the in-transit shipment requirements of the competent authority including the authorized ports of entry and exit; expiry dates pertaining to authorization; any other specific information concerning the shipment while in that country, such as the periods during which the shipment is anticipated to be in bond and the anticipated location of the shipment while in bond; any restrictions or conditions imposed by the competent authority; and the authorizing officer's signature and seal."

Japan

[Original: English]

A. Amendment previously issued in document A/AC.254/L.171

Article 2: Definitions

1. Japan proposes to amend subparagraph (a) to read as follows:

"(a) 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm. Those components shall be defined in accordance with domestic law. However, blank cartridges,[1] primers, propellant powder, exploding bullets and exploding projectiles shall be included;"

[1] "Blank cartridge": a complete cartridge with a primer and propellant powder.

B. Amendments previously issued in document A/AC.254/5/Add.22

Article 6: Jurisdiction

2. It is proposed to amend article 6 to read as follows:

"Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in article 5 of this Protocol. Article 9 of the Convention shall apply mutatis mutandis to the offences established pursuant to this Protocol."

Article 7: Confiscation or forfeiture

3. It is proposed to amend article 7 to read as follows:

"States Parties shall adopt such measures as may be necessary to enable the confiscation or forfeit of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked. Article 7 of the Convention shall apply mutatis mutandis to this Protocol."

Malawi and Swaziland*

[Original: English]

Article 2: Definitions

Malawi and Swaziland propose the insertion in article 2 of a new subparagraph to read as follows:

"(...) 'Broker': brokering shall mean acting:

(i) For a commission, advantage or cause, whether pecuniary or otherwise;

(ii) To facilitate transfer, documentation, and/or payment in respect of any transaction relating to the buying or selling of firearms, their parts and components and ammunition; and

Thereby acting as intermediary between any manufacture or supplier of or dealer in firearms, their parts and components and ammunition and any buyer or recipient thereof."

Norway*

[Original: English]

Article 5: Criminalization

The following new subparagraphs should be added to paragraph 1:

"(...) Intentionally providing false, misleading, incomplete or otherwise incorrect information in licensing or authorization documents;

"(...) Intentionally making, procuring or providing fraudulent licensing or authorization documents agreed upon in this Protocol; and

"(...) Knowing that licensing or authorization documents are fraudulent:

* Amendment previously issued in document A/AC.254/5/Add.22.

"(i) Using, dealing with or acting on such documents; and

"(ii) Causing such fraudulent documents to be used, dealt with or acted on."

Syrian Arab Republic*

[Original: Arabic]

Preamble

New preambular paragraph

1. A new preambular paragraph should be added before preambular paragraph (a), the text of which should read as follows:

"*Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as 'the Convention'),"

Preambular paragraph (a)

2. Option 2 should be adopted.

Preambular paragraph (b)

3. Option 2 should be adopted.

Preambular paragraph (c)

4. Option 1 should be adopted.

Preambular paragraph (c) bis

5. Preambular paragraph (c) *bis*, proposed by the delegation of Mexico, should be deleted.

Preambular paragraph (d)

6. Option 1 should be adopted.

Preambular paragraph (f) bis

7. Preambular paragraph (f) *bis* should be adopted as an alternative to preambular paragraphs (e) and (f).

Preambular paragraph (g)

8. Preambular paragraph (g) should be deleted because preambular paragraph (f) *bis* is sufficient.

Preambular paragraph (h)

9. Option 2 should be adopted.

Preambular paragraph (i)

10. Option 2 should be adopted.

* Amendments previously issued in document A/AC.254/5/Add.22.

New preambular paragraph

11. The following new preambular paragraph should be added:

> "*Desiring to* supplement the Convention by a protocol designed to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,"

Article 1: Relationship with the United Nations Convention against Transnational Organized Crime

12. The text of article 1 should be amended to read "The provisions of articles [...] of the Convention, done at [...], shall also apply mutatis mutandis to this Protocol", thereby bringing that article in line with the text of article 1, option 2, of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol" (A/AC.254/4/Add.1/Rev.2)).

Article 5: Criminalization

Paragraph 2

13. The brackets should be removed.

Paragraph 3

14. Paragraph 3 should be deleted since its scope extends beyond individuals to include States, in addition to the fact that it deals with matters other than illicit manufacturing or trafficking.

Article 6: Jurisdiction

15. Option 1 should be adopted, thereby bringing article 6 in line with the provision contained in article 6 of the Migrants Protocol (A/AC.254/4/Add.1/Rev.2).

Article 7: Confiscation or forfeiture

16. The words "or forfeiture" in the title should be deleted.

Paragraph 1

17. The words in brackets should be deleted.

Paragraph 2

18. Paragraph 2 should be redrafted to read as follows: "States Parties shall dispose of the confiscated firearms and ammunition in accordance with their respective national laws".

Article 8: Record-keeping

Paragraph 1

19. The brackets should be removed.

Paragraph 2

20. The first sentence in brackets, which reads "Records shall be kept for a period of not less than [ten] years after the last transaction effected under a [particular certificate]", should be deleted.

21. The brackets should be removed from the second sentence.

Paragraph 3

22. Option 2 should be adopted.

Article 9: Marking of firearms

Paragraph 1

23. The brackets should be removed.

24. In subparagraph (a), the words "and year" should be added after the word "place" and the brackets should be removed. In subparagraph (b), the brackets should be removed. In subparagraph (c), the brackets should also be removed.

Paragraph 1 bis

25. The brackets should be removed.

Article 15: Cooperation

Paragraph 2

26. The bracketed words "on matters relating to this Protocol" should be retained.

Paragraph 3

27. The brackets should be removed.

Article 15 bis: Establishment of a focal point

28. Article 15 *bis* should be deleted in order to avoid duplication, the focal points having been mentioned in article 15.

Article 16: Exchange of experiences and training

Paragraph 2

29. The phrase in brackets should be deleted.

Article 18 bis: Registration and licensing of brokers

30. The title of this article should be changed to "Licensing by brokerage".

31. The words "natural or judicial" should be added before the word "person".

32. The brackets should be removed from the words "and ammunition".

33. The words "wherever located" should be deleted.

34. The words "to register with and receive approval from his or her country of nationality" should be replaced with the words "to obtain a licence to engage in that activity from his or her country of residence".

Turkey*

[Original: English]

Article 2: Definitions

Turkey proposes the following amendment to article 2 of the revised draft Protocol:

"(a) 'Ammunition':

"(i) Cartridge: the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm, [provided that those components are themselves subject to authorization in the respective State Party];

"(ii) Any other weapon or destructive device such as an explosive, incendiary bomb, grenade, rocket, rocket launcher, missile, missile system or mine."

United States of America**

[Original: English]

Article 2: Definition

1. It is proposed that the following new paragraph be inserted between paragraphs (a) and (b) of article 2:

"(...) 'Broker': Any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of firearms, their parts and components and ammunition in return for a fee, commission or other consideration."

Article 5: Criminalization

It is proposed that the following new subparagraph be added to the end of paragraph 1 of article 5:

"(...) Acting as a broker as defined in this Protocol without registering and obtaining a licence or authorization in accordance with article 18 *bis* of this Protocol."

Article 18 bis: Registration and licensing of brokers [traders and forwarders]

2. It is proposed that the existing language of article 18 *bis* be amended to read as follows:

"... shall take steps to require brokers:

"(a) To register with their country of nationality and with any country where the person acts as a broker as defined in this Protocol; and

"(b) To obtain for their transactions a licence or authorization from the country where the person acts as a broker as defined in this Protocol."

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* Amendment previously issued in document A/AC.254/L.151.

** Amendments previously issued in document A/AC.254/L.150.

United Nations A/AC.254/5/Add.31

General Assembly

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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Eleventh session
Vienna, 2-27 October 2000
Item 3 of the provisional agenda*
Finalization and approval of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions received from Governments

Sweden: amendment to article 2 bis of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Article 2 bis: Definitions

In subparagraph (a), replace the words "[, irrespective of the consent of the person]" with the words ", irrespective of whether the victims of trafficking have consented to the intended exploitation"; or add as a new subparagraph the following:

"(a) *bis* In determining whether trafficking in persons has occurred, it is irrelevant whether a victim of trafficking has consented to the intended exploitation or not."

* A/AC.254/35.

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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Eleventh session
Vienna, 2-27 October 2000
Item 3 of the provisional agenda*
Finalization and approval of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions received from Governments

India: amendments to article 3, 5 and 7 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Article 3: Obligation to criminalize

Paragraph 2

1. Amend paragraph 2 (a) to read as follows:

"(a) Committing or attempting to commit an offence set forth in article 2 *bis* of this Protocol; and"

2. This amendment would make article 3 more comprehensive, enabling it to cover not only persons "attempting" to commit an offence set forth in article 2 *bis* but also persons actually committing the offence.

Paragraph 3

3. Amend paragraph 3 to read as follows:

"3. The knowledge, intent or purpose required to commit an offence set forth in article 2 *bis* of this Protocol or in paragraph 2 of this article may be inferred from objective factual circumstances."

4. This amendment would make article 3 more comprehensive, enabling it to cover the offences defined in article 2 *bis*, including "trafficking in persons," as well as the offences set forth in paragraph 2 of article 3.

* A/AC.254/35.

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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Eleventh session
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Item 3 of the provisional agenda*
Finalization and approval of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions received from Governments

United States of America: amendments to article 10 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Article 10: Prevention of trafficking in persons

Add at the end as new paragraphs:

"4. States Parties, whether they are countries of origin, transit or destination, shall take measures to address the root factors that encourage trafficking in persons, such as poverty, underdevelopment and lack of equal opportunity.

"5. States Parties, whether they are countries of origin, transit or destination, shall take measures, such as educational, social or cultural measures, to discourage the demand that nurtures the exploitation of persons.

"6. States Parties shall take such measures as may be necessary to prevent and prohibit anyone from knowingly transporting a person across an international border for the purpose of the exploitation of the prostitution of others."

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* A/AC.254/35.

United Nations A/AC.254/5/Add.34

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Vienna, 2-27 October 2000
Item 4 of the provisional agenda*
Finalization and approval of the additional international legal instrument against illegal trafficking in and transporting of migrants

Proposals and contributions received from Governments

United Kingdom of Great Britain and Northern Ireland: amendment to article 4 of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime

Article 4: Criminalization

Paragraph 2

Subparagraph (d) should be revised to read:

"[(d) In any other way intentionally contributing to the comission of, or conspiring to commit, an offence set forth in paragraph 1 of this article.]"

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* A/AC.254/35.